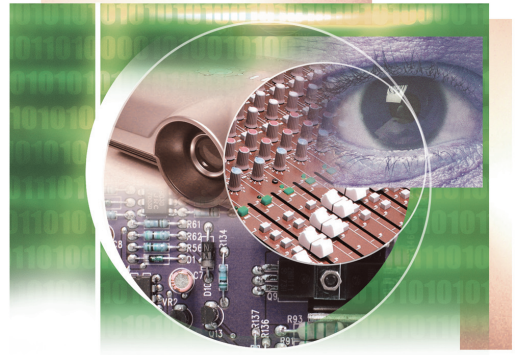


Competitive Advantages of Intellectual Property



• A company's development, identification and protection of its intellectual property ("IP") can provide valuable, competitive advantages that significantly improve the company's ability to generate revenue.

In the United States, IP can be, or be embodied in, products, processes, methods, designs, strategic information and data, literature, software, drawings, words and symbols. Products, processes, methods and designs are examples of things which can be patentable and for which U.S. patents can be obtained. Processes, methods and strategic information and data are examples of things which can be protectable as a trade secret. Literature, software and drawings are examples of works which can be copyrightable and for which U.S. copyright registrations can be obtained. Words and symbols are examples of things which can function as trademarks and for which U.S. trademark registrations can be obtained.

A company develops its IP when its employees use creativity and imagination to: develop a new or improved product, process, method or design; develop or compile strategic information or data relating to manufacturing, marketing or sales; author company or product literature, software or a technical drawing; or coin a word or symbol to identify the company as the source for certain products.

When an employee's creativity and imagination generate results, i.e., company IP, the employee should timely identify those results. That is, he or she should confidentially disclose those results to the company in such a way as to substantiate the results and verify that he or she achieved the results on a certain date. Such timely disclosure is a crucial step in a company's overall IP game plan, as that step evidences the conception and the company's ownership of that particular IP.

In the United States, patent protection for an invention (e.g., a product, process or method) or a design can be obtained by timely filing a patent application and successfully prosecuting that application to the grant of a patent. Trade secret protection is governed by State-specific laws and such protection can exist

if, among other things, the company makes reasonable efforts to maintain the secrecy of the trade secret. In the United States, copyright protection exists when an original work is created. However, obtaining a complete set of rights in a copyrighted work requires registration of the work. In the United States, trademark protection arises through actual commercial use of the trademark. As with copyright protection, obtaining a complete set of rights in a trademark requires registration of the trademark. Obtaining proper IP protection also often entails utilizing written contracts that expressly: (1) assign IP to the company; (2) impose certain non-disclosure obligations on the company's employees and third-party vendors; and (3) impose reasonable non-compete obligations on the company's employees (i.e., if and when they become former employees).

There are three basic ways in which developed, identified and protected IP can provide valuable, competitive advantages

that significantly improve a company's ability to generate revenue: (1) the company can practice the IP; (2) the company can exclude others from practicing certain IP. That is, patent and copyright rights are exclusive rights that provide legal monopolies for limited periods of time. A patent and copyright owner can exclude others from practicing the patented invention, or patented design, and from exercising any of the rights in the copyrighted works (e.g., reproduction, preparation of derivative works and distribution); and (3) the company can license the IP, thereby monetizing the IP and realizing revenue that, but for the development, identification and protection of the IP, would not exist. Of course, litigation may be a necessary tool to protect, enforce and maximize the value of the company's IP.

If properly developed, identified and protected, a company's IP can be a valuable asset. Paying attention to IP today can help your company for years to come. ■

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